

REMARKS

By this amendment, claims 18-21, 23-36, 38-40, and 42-49 are pending, in which claims 1-17, 22, 37, and 41 are canceled without prejudice or disclaimer, and claims 18, 23, 25-27, 29, 31-33, 38-39, 40, 42, and 47 are currently amended. No new matter is introduced.

The Office Action mailed July 10, 2009, rejected claim 33 under 35 U.S.C. § 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter; claims 18 and 33 under 35 U.S.C. § 102(e) as being anticipated by *Na et al.* (U.S. Patent 7,031,746); claims 18, 20, 27, 29-33, 35, 41-42 and 44-49 under 35 U.S.C. § 102(e) as being anticipated over *Engstrom* (U.S. Patent 7,065,333); claims 19, 22-23, 34 and 37 under 35 U.S.C. § 103(a) as being unpatentable over *Engstrom* in view of *Na et al.*; claims 21 and 36 under 35 U.S.C. § 103(a) as being unpatentable over *Engstrom* in view of *Wakamatsu* (U.S. Patent Pub. 2001/0029196); and claims 24-26, 28, 38-40 and 43 under 35 U.S.C. § 103(a) as being unpatentable over *Engstrom* in view of *Na et al.* and further in view of *Wakamatsu*.

With respect to the rejection of claim 33 under 35 U.S.C. § 112, second paragraph, Applicants respectfully traverse the rejection. Claim 33 recites “[a] data receiving device comprising” in its preamble and “the data receiving device being arranged to operate” in the body of the claim. Therefore the term, “the data receiving device” has a clear antecedent basis in its preamble. Accordingly, the Applicants respectfully request the withdrawal of the rejection of claim 33 under 35 U.S.C. § 112, second paragraph.

With respect to the anticipation rejections of claims 18, 20, 27, 29-33, 35, 41-42 and 44-49 under 35 U.S.C. § 102(e), the Applicants note that independent claims 18 and 33 have been amended to incorporate the features of claims 22 and 37, respectively. Therefore, the anticipation rejections have been rendered moot.

Since the subject matter of claims 22 and 37 have been incorporated into independent claims 18 and 33, respectively, the response below will address the obviousness rejection based on *Engstrom* in view of *Na et al.*, which were cited to reject previously pending claims 22 and 37. The Applicants submit that, even assuming for the sake of argument that the applied references can be properly combined, the applied references, either when taken singularly or in combination, fail to disclose or suggest all of the features recited in independent claims 18 and 33.

MPEP §2141 notes that the Patent Office bears the initial burden of factually supporting any *prima facie* conclusion of obviousness. MPEP §2142 further notes that “[t]o reach a proper determination under 35 U.S.C. 103, the examiner must step backward in time and into the shoes worn by the hypothetical ‘person of ordinary skill in the art’ when the invention was unknown and just before it was made. Knowledge of applicant’s disclosure must be put aside in reaching this determination, yet kept in mind in order to determine the “differences,” conduct the search and evaluate the “subject matter as a whole” of the invention. However, impermissible hindsight must be avoided and the legal conclusion must be reached on the basis of the facts gleaned from the prior art.”

The Applicants submit that the Office Action fails to establish a *prima facie* case of obviousness for the claims as they are set forth herein, since there is no evidentiary support for the conclusion that the features recited in the claims were known at the time of the present invention. Accordingly, the Applicants request that such evidentiary support be placed on the record, or the obviousness rejections withdrawn.

As amended, independent claim 18 recites, among other features, “in response to an interruption, proceeding in a first resource saving mode by continuing to receive data from the

broadcast network but not processing and not outputting said received data; and proceeding in a **second resource saving mode in which no data is received from the broadcast network, after operating in the first resource saving mode for a first predetermined time period.**"

As amended, independent claim 33 recites, among other features, "in response to an interruption the data receiving device being arranged to operate in a first resource saving mode in which the receiver remains active but received data is not processed by the processor and not outputting, and the data receiving device being arranged to operate **in a second resource saving mode in which the receiver is deactivated, after operating in the first resource saving mode for a first predetermined time period.**" The Applicants submit that the applied references, either when taken singularly or in combination, fail to disclose or suggest all of the above features.

Na et al. describes an apparatus and method for enabling a user to view a multimedia broadcasting, especially for processing a multimedia audio signal when a voice call is requested during the multimedia broadcasting. Regarding teaching of the first resource saving mode of the claims of the present application, the Office Action cites column 7, line 67, through column 8, line 3, of *Na et al.*, which states that "[i]t can be contemplated that the DMB signal is received but the controller 113 controls the DEMUX 117 or the decoder 119 not to process the received DMB signal." However, *Na et al.* does not disclose or suggest a second resource saving mode in which **no data is received from the broadcast network**, or in which **the receiver is deactivated, after operating in the first resource saving mode for a first predetermined time period.** *Na et al.* never discloses or suggests such features.

Engstrom fails to supplement the above noted deficiency in the teachings of *Na et al.*

Engstrom describes a method, system, and apparatus for finding, playing, and recording broadcasts on a mobile device (400) that includes two or more tuners and also works as a cellular

telephone. The mobile device tunes one tuner (452) to an identified broadcast and plays it for the user, and while one tuner is playing a broadcast, the other tuner (453) is employed to scan for another broadcast based on user preference. When another broadcast is identified, the other tuner can start playing the scanned broadcast, cause it to be recorded for play back at a later time, or resume scanning for yet another broadcast based on user preference. When the mobile device is used for other purposes, the mobile device can resume playing a broadcast from the point of interruption. (See, e.g., Abstract.)

Regarding teaching of the first resource saving mode of the claims of the present application, the Office Action cites steps 802-806 of FIG. 8, which describes asynchronously recording an interrupted broadcast and resuming playing of the broadcast from the point of interruption when the interruption has ended. However, *Engstrom* does not disclose or suggest a second resource saving mode in which **no data is received from the broadcast network**, or in which **the receiver is deactivated, after operating in the first resource saving mode for a first predetermined time period**. *Engstrom* never discloses or suggests such features.

The Office Action appears to attempt to combine features of *Na et al.* and *Engstrom* to arrive at the claimed second resource savings mode, by presuming certain functional operations of the devices described in these combined references under a hypothetical scenario. More specifically, the Office Action states on page 9 that “if the time period (duration) of a received DMB session in *Engstrom* is recited ‘first predetermined time period’, the process described in *Engstrom* operates as recited, as the ‘first resource saving mode’ operates while the program is being broadcast, and once the broadcast is over, *Engstrom* ‘proceeds in a second resource saving mode in which no data is received from the broadcast network,’ as recited.” Thus, the Office

Action surmises what the operation of the device described in *Engstrom* would be if a “DMB session” hypothetically ended.

While the reference to a “DMB session” is presumably based on the teachings in *Na et al.*, the Applicants note that *Na et al.* never mentions such “sessions.” *Na et al.* discusses the receipt of DMB signals, but does not indicate an end of a session at which no data is received from the DMB source, or at which the receiver is deactivated, after operating in the first mode for a predetermined time period. *Na et al.* merely describes “TV off” and “audio off” modes while a user is making a phone call, and never discloses a first resource saving mode followed by a second resource saving mode after operating in the first mode for a predetermined time period.

Furthermore, *Engstrom* merely teaches “the broadcast is asynchronously recoded from the point of interruption” (see, column 10, lines 60-61), and this recordation will continue until the loop at step 808 of FIG. 8 determines that the use of the mobile device for a telephone call is negative (see, column 10, lines 62-65). More specifically, *Engstrom* describes that the duration of the recordation period is decided based only on the condition of telephone usage, and does not disclose an end of a broadcast at which no data is received, or at which the receiver is deactivated, after operating in the first mode for a predetermined time period.

Accordingly, the Applicants submit that the applied references, either when taken singularly or in combination, fail to disclose or suggest all of the limitations recited in independent claims 18 and 33. Therefore, the Applicants respectfully request the withdrawal of the obviousness rejection of independent claims 18 and 33.

The dependent claims are considered allowable for the reasons advanced for independent claim from which they respectively depend. These claims are further considered allowable as they recite other features of the invention that are neither disclosed nor suggested by the applied

references when those features are considered within the context of their respective independent claim.

Therefore, the present application, as amended, overcomes the objections and rejections of record and is in condition for allowance. Favorable consideration is respectfully requested. If any unresolved issues remain, it is respectfully requested that the Examiner telephone the undersigned attorney at (703) 519-9952 so that such issues may be resolved as expeditiously as possible.

To the extent necessary, a petition for an extension of time under 37 C.F.R. § 1.136 is hereby made. Please charge any shortage in fees due in connection with the filing of this paper, including extension of time fees, to Deposit Account 504213 and please credit any excess fees to such deposit account.

Respectfully Submitted,

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